

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

CHRISTOPHER SMITHHART,

Petitioner,

v.

**CIVIL ACTION NO. 3:06-CV-11
(BAILEY)**

DOMINIC A. GUTIERREZ,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on August 9, 2007 [Doc. 21]. In that filing, the magistrate judge recommended that this Court dismiss as moot the petitioner's application under 28 U.S.C. § 2241 [Doc. 1].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1);

Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due August 23, 2007 [Doc. 21], pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). Neither party filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

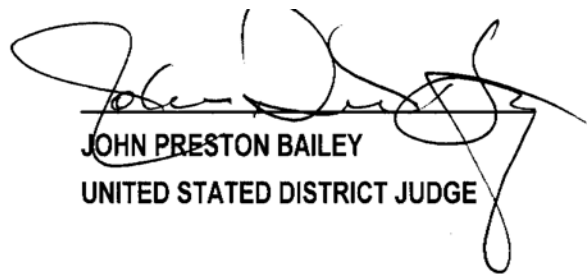
In filing his petition, the petitioner's ultimate goal was to have his Kentucky detainer lifted so that he could complete an RDAP program and possibly reap the benefit of a one year reduction in his federal sentence. On September 6, 2006, the petitioner advised the Court that his new mailing address was at the Federal Prison Camp in Manchester, Kentucky. On January 4, 2007, the petitioner advised the Court of yet another new mailing address at 4398 Saint Olaf Circle in Henderson, Kentucky. Although the petitioner has not provided the Court with any further information, the BOP website indicates that he was released from their custody on July 6, 2007. Accordingly, the petitioner can no longer benefit from the RDAP, and the case is now moot.

Therefore, upon careful review of the R & R, it is the opinion of this Court that the **Magistrate Judge's Report and Recommendation** [Doc. 21] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DISMISSES as moot** the petitioner's application under 28 U.S.C. § 2241 [Doc. 1] and **ORDERS** it **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to mail true copies of this Order to all counsel of record and the *pro se* petitioner.

DATED: October 2, 2007.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE